*THE HONBLE SRI JUSTICE V.V.S. RAO

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+WRIT PETITION No.4958 of 1999

%Dated 07-02-2003

A.EKAMBARA NAICKER. ..PETITIONER.

VERSUS

$ THE LAND ACQUISITION OFFICER-CUM-
REVENUE DIVISIONAL OFFICER,
SUB-COLLECTOR'S OFFICE,
MADANAPALLE, CHITTOOR DISTRICT,
AND ANOTHER. ..RESPONDENTS.

! Counsel for Petitioner:SRI.K.G.KRISHNA MOORTHY.

^Counsel for Respondents:G.P. FOR LAND ACQUISITION.

< GIST:

> HEAD NOTE:

? Cases referred

1. 1990 (1) AN.W.R. 342.
2. (2002) 5 SCC 65.
3. (2002) 7 SCC 273.
4. AIR 1991 SC 1080.
5. AIR 1989 SC 630.

C/8.

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.4958 OF 1999

ORDER:

An extent of Acs.58.63 of land covered by S.No.511/2 of Palamaneru village was acquired in 1988 for the purpose of establishing industrial estate by A.P.Industrial and Infrastructure Corporation Limited. An Award was passed being Award No.1 of 1988 on 26.8.1988. The first respondent issued notice of Award as required under sub-section (2) of Section 12 of the Land Acquisition Act, 1894 (for short, the Act) to all the landowners on 26.8.1988. The petitioner, whose land admeasuring Ac.1.18 was acquired, was also issued such notice informing that compensation awarded by the first respondent will be paid to the land owners on 17.9.1988 at 11.00 a.m. in the office of the Sub-Collector, Madanapalle, the first respondent herein. The petitioner also appeared before the first respondent and was paid an amount of Rs.65,457.05 ps. being compensation for Acs.1.18 covered by S.No.536 belonging to him.

The petitioner and thirty others filed a writ petition being W.P.No.4570 of 1994 before this Court alleging that they received compensation under protest and requested the first respondent to make reference under Section 18(1) of the Act to the civil Court and that the petitioner and others made an application on 22.9.1988, and in spite of that reference is not made. They prayed for a direction to the Land Acquisition Officer to refer the matter to the Civil Court. This Court having regard to the concession made by the learned Government Pleader appearing for respondents disposed of the writ petition on 17.3.1994 in the following manner.

In the circumstances, within six weeks from today the first respondent shall dispose of the applications of the petitioners in

respect of Award No.1/1988 – B/6728/85 for reference under Section 18 of the Act and make reference if the petitioners herein sought reference under Section 18 of the Land Acquisition Act, 1894 in time and in compliance with the requirement of Section 18(2) of the Act and if they received the amount awarded under protest.

In pursuance of the orders of this Court dt.17.3.1994 the first respondent issued an endorsement dt.10.5.1994 rejecting the request for reference to the Civil Court on two grounds, that the awardees did not protest at the time of taking compensation and that they have received notices under Section 12(2) of the Act without putting the dates and signatures and not applied for reference to Civil Court as required under Section 18(2) of the Act. The endorsement was addressed to Sri K. R.,Venkatachalam Chetty and others and Mandal Revenue Officer, Palamaneru was requested to serve the endorsement on the petitioners. It is not denied before me that the said endorsement was served only on Sri K.R.Venkatachalam Chetty and not other thirty petitioners in W.P.No.4570 of 1994.

The petitioner herein, who was petitioner No.29 in the earlier writ petition, again filed the present writ petition seeking a Writ of Mandamus directing the second respondent to refer the matter to the Civil Court. In brief his case is as follows.

He alleges that he made application under Section 18(2) of the Act on 22.9.1988 within the time prescribed under law. When there was no response, he along with others filed W.P.No.4570 of 1994. Though this Court directed the respondents to dispose of the applications for reference, no action was taken and hence writ petition is filed seeking direction to refer the matter.

In the counter-affidavit the Government came forward stating that pursuant to orders of this Court applications made by the petitioners and others were rejected on 10.5.1994 and that the petitioner did not file any application before the first respondent on 22.9.1988 under Section 18 of the Act. An application dt.30.5.1990 signed by twelve persons was submitted to the first respondent. The petitioner was one of the persons who signed the application dt.30.5.1990. By then the endorsement was issued on 26.2.1990 by the first respondent to the effect that the applications under Section 18 of the Act are time barred since they are filed beyond two months

period. The endorsement dt.10.5.1994 rejecting the request of awardees for reference under Section 18 of the Act was served on K.R.Venkatachalam Chetty on 17.5.1994 and the petitioner who is interested party ought to have enquired about the same. The petitioner appeared before the Land Acquisition Officer pursuant to notice under Section 12(2) of the Act and received compensation through a cheque on 17.9.1988 without making any endorsement in the acquittance statement and without any protest.

The petitioner filed a reply affidavit stating that he came to know about passing of the Award in September, 1988 when he was summoned to receive the amount of compensation. When a cheque was sought to be served on him in the office of Mandal Revenue Officer, he did not receive and requested Sri Eswaraiah, clerk in Mandal Revenue Officer's office to receive his objection petition filed under Section 18(2) of the Act, but he refused the same. Therefore, he informed his Advocate about the same when the Advocate sent the representation on 24.9.1988 by registered post with acknowledgement due which was received by the first respondent on 26.9.1988. In paragraph-5 of the reply affidavit he further averred that the allegation that he received compensation without any protest is not correct. He signed application on 22.9.1988 and sent on 24.9.1988 by registered post. Along with the reply affidavit he placed before this Court a true copy of the acknowledgement. Subsequently, the original application dt.22.9.1988, postal receipt and acknowledgement are also placed before this Court.

Learned Assistant Government Pleader for Land Acquisition, Sri Peddanna, however, has produced entire file and submits that the petitioner has not sent application dt.22.9.1988 and the said application is not in the file. He also contends that postal receipt and acknowledgment do not pertain to this matter.

Learned counsel for the petitioner Sri K.G.Krishna Murthy submits that in view of the postal receipt and acknowledgement, it should be deemed that the petitioner has sent his representation/application under Section 18(2) of the Act seeking a reference to Civil Court within time and therefore a direction may be issued to the respondents. He also submits that after this Court in the earlier writ petition directed the respondent to pass appropriate orders

on the representation made by the petitioners therein, no order is served on the petitioner and therefore the long delay in disposing of the application is illegal. Alternatively he submits that as the petitioner has sent application by registered post the presumption under Section 27 of the General Clauses Act, 1897 comes into play and the application should be deemed to have been served on the first respondent. He placed reliance on S. SRIRAMA MURTHY v. K. SWAMI NAIDU[1], SYNDICATE BANK v. GENERAL SECY. SYNDICATE BANK STAFF ASSN.[2] and UNION OF INDIA v. HANSOLI DEVI[3].

Learned Assistant Government Pleader refutes these contentions and submits that the petitioner is changing the stand from time to time. When he filed writ petition along with thirty others it was his case that he has sent a representation on 24.9.1988. In the reply affidavit he has again stated that when the amount was offered to him he refused and sent representation through his Lawyer. Again in the reply affidavit he stated that he himself sent representation by Registered Post with Acknowledgement Due. He also submits that in the absence of any proof that postal receipt produced before this Court is in relation to alleged representation dt.22.9.1988 presumption under Section 27 of the General Clauses Act is not available.

In the light of the pleadings and rival submissions, the only point for consideration is whether the petitioner is entitled for a direction to the respondents to refer the matter to Civil Court?

As noticed, the petitioner and thirty others filed W.P.No.4570 of 1994 which was disposed of by this Court on 17.3.1994 directing the first respondent to pass appropriate orders on the application of the petitioners in respect of Award No.1 of 1988 within a period of six weeks. It was the case of the petitioners therein that petitioner Nos.29, 27, 28, 6, 10, 14, 15, 16 and 20 respectively made applications on 24.9.1988 and 21.9.1988 and reminders thereof as well as common memorandum petition dt.30.5.1990 seeking a reference to Civil Court. The petitioner herein was petitioner No.29 in the said writ petition. Therefore, from the earlier writ petition it is clear that the petitioner made representation either on 24.9.1988 and/or 21.9.1988 and certainly not on 22.9.1988 as it is admitted that common memorandum

was made on 30.5.1990 only by twelve persons excluding the petitioner. Be that as it is, in the affidavit accompanying writ petition the petitioner comes forward alleging that when he was summoned to the office of Mandal Revenue Officer, Palamaneru, a cheque was delivered to him and he protested and gave application protesting compensation on 22.9.1988. He categorically states in paragraphs-3 and 4 of the writ affidavit that the said application was received by the first respondent, who kept the same pending and did not pass any orders ignoring the law laid down by the Supreme Court in MANGAT RAM TANWAR v. UNION OF INDIA[4]. Therefore, he prayed for a declaration that the action of the respondents in not referring his claim even after eleven years to the Civil Court is illegal and arbitrary.

Let us see what is the case of the petitioner in his reply affidavit. In paragraph-4 of the reply affidavit filed before this Court on 2.1.2003 he alleges as under.

> When I came to know that an Award has been passed with a nominal amount, I did not receive the cheque when it was sought to be served on me in the office of the Mandal Revenue Officer, Palamaneru. I also requested the concerned clerk, Sri Eswaraiah of the MRO's office, Palamaneru to receive my objection petition filed under Section 18(2) of the Land Acquisition Act, but he refused to receive the same on the ground that it was addressed to the Revenue Divisional Officer, Madanapalle. At that stage, I informed my advocate that the concerned clerk of the Land Acquisition Officer who visited Palamaneru did not receive the objections. Then, he sent it by registered post on 24.9.1988 which was received by the first respondent on 26.9.1988. A true copy of the said acknowledgement has been filed in the earlier writ petition as material papers at page57. It is a fact that I received the amount from the first respondent office and it is also a fact that I sent my objection to the first respondent within the time stipulated under Section 18(2)(a) of the Land Acquisition Act.

From the above it is clear that when the cheque was given to him, he refused to receive the same and requested Eswaraiah, clerk in the office of Mandal Revenue Officer, Palamaneru, to receive his objections. He further alleges that further when it is not received by the clerk, he informed his Advocate, who sent it by Registered Post. This is improbable for the reason that the record produced would show that notice of Award was sent on 26.8.1988 and the same was served on the petitioner on the same day, and payment was made by way of cheque on 17.9.1988. The petitioner received the amount without any protest. He asserts that on the day when the amount is offered to him, he protested and informed his Lawyer. Therefore, the contention that petitioner sent an application on 22.9.1988 cannot be believed.

Further, in the reply affidavit in paragraph-5 his hypothesis is as under.

> The allegation that I received the compensation without any protest or without filing the application under Section 18 has no manner of right whatsoever to seek reference under Section 18 of the Act after long lapse is false. As stated supra, I sent claim application dated 22.9.1988 on 24.9.1988 by registered post with acknowledgement and the same has been received by the first respondent office on 26.9.1988. A true copy of the acknowledgement which was filed in the earlier writ petition is herewith filed.

In the affidavit filed on 9.3.1999 along with the writ petition the petitioner alleges that he submitted a representation on 22.9.1988 to the first respondent, who allegedly kept pending with him. In the reply affidavit he states that on the day when money was offered i.e.17.9.1988 his Lawyer sent representation. Again in the same reply affidavit he says that he sent claim application dt.22.9.1988 on 24.9.1988. This would show that the petitioner's contention lacks truth.

The postal receipt and acknowledgement are placed before me. In the application the date of application is not typed. The petitioner after affixing his signature also mentioned the date under his signature. The application is typed one. Curiously below the signature of the petitioner some advocate for the petitioner endorsed to the effect that application is being sent by Registered Post with Acknowledgement Due, as an employee refused to receive the petition. This also improbabilises his case for he categorically stated in the affidavit that his Lawyer sent application on 24.9.1988 by Registered Post. The postal receipt bears No.0742. It shows that the said Registered letter No.0742 is addressed to Sub-Collectror, Madanapalli and was registered in the post office at Palamaneru. The postal acknowledgement contains signature, postal stamp with the date 26.9.1988 and the stamp of the office of the first respondent and dt.26.9.1988. The number of registered letter is conspicuous by absence on the acknowledgement. Further, the postal stamp of the receiving post office is absent. It is reasonable to draw inference that some other letter with the acknowledgment duly stamped as 26.9.1988 by the receiving post office is sought to be used by the petitioner to get over the actual state of affairs as disclosed in the entire record produced before me. If the petitioner has sent a registered letter addressed to first respondent on 24.9.1988 the acknowledgement should also contain the postal stamp dt.24.9.1988, which is absent.

Therefore, it is not possible to accept that the acknowledgment produced before this Court is in relation to registered letter No.0742. Further, it is also not possible to accept that the postal receipt No.0742 is in relation to alleged application dt.22.9.1988. It may be mentioned again that the petitioner's case is that on 17.9.1988 when the amount was paid to him, he protested in vain and then gave representation to the first respondent who received it. Therefore, he could not have given representation dt.22.9.1988 to the first respondent on 17.9.1988 itself. In any view of the matter, there is presumption under Section 114 of the Evidence Act, 1872 that the Court is entitled to presume the existence of fact which is likely to happen regard being had to common course of public affairs in relation to the fact of particular case. Illustration (e) to Section 114 of the Evidence Act stipulates that the Court may presume that judicial and official acts have been regularly performed. Though the learned counsel for the petitioner submitted repeatedly that file produced before this Court is not properly maintained and some pages are missing. After perusing the same, I am not able to agree with him. The petitioner has not attributed any mala fides to the respondents and therefore it requires strong reason to convince the Court that the respondents intentionally removed the petitioner's application from the file. Having regard to earlier writ petition, pleadings in the affidavits, the petitioner cannot be heard to say that application has been removed from the files.

Section 27 of the General Clauses Act, 1897 lays down that when any provision requires any document to be served by post, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless contrary is proved, it is deemed to have been effected at the time at which the letter would be delivered in ordinary course of post. In M/S. MADAN & CO. v. WAZIR JAIVIR CHAND[5] referring to Section 21 of the General Clauses Act, it was laid down.

It is true that the proviso to Cl.(i) of S.11 and the proviso to S.12(3) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through post. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under S.27 of the General Clauses Act. Under the rules of

the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee. The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender.

To the same effect is the decision of the Supreme Court in UNION OF INDIA v. HANSOLI DEVI (supra) as well as this Court in S. SRIRAMA MURTHY v. K. SWAMI NAIDU (supra). The learned counsel submits that as the postal receipt is produced before this Court, the Court may presume that the petitioner's application has been received by the first respondent. I am afraid, I cannot agree with the same both legally as well as factually. As a fact the petitioner failed to prove that postal acknowledgment No.0742 is in relation to alleged application dt.22.9.1988. The very fact that he sent application cannot be believed for his case initially was that he personally gave representation to the first respondent on 17.9.1988 (on which date he received money) and first respondent kept the same with him. Secondly, Section 27 of the General Clauses Act enables the Court to draw presumption that a letter addressed by Registered Post to proper address of the person is deemed to have been served in the ordinary course of the post. This presumption is not applicable in all cases and it is only applicable where an Act requires document to be served by post. Section 18(1) of the Land Acquisition Act requires any person interested, who has not accepted the Award to make written application and require the matter to be referred to the Civil Court. It does not require application to be made by post. As rightly contended by the learned Assistant Government Pleader a person who has not protested at the time of receiving compensation is not entitled to seek reference. Further, when this Court has already disposed of the matter earlier and directed the first respondent to dispose of the application of the thirty-one awardees, it was disposed of on 10.5.1994. Notwithstanding the submission that the same was not served on the petitioner, in the facts and circumstances of the case it is not possible to accept that the petitioner is not aware of the endorsement dt.10.5.1994 issued by the first respondent rejecting the application for reference on the ground that they have received the amount without

any demur and without protesting the Award.

In the result, for the above reasons, the writ petition fails and is accordingly dismissed with costs.

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(V.V.S.RAO, J)

7.2.2003

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[1] 1990 (1) An.WR 342

[2] (2000) 5 SCC 65

[3] (2002) 7 SCC 273

[4] AIR 1991 SC 1080

[5] AIR 1989 SC 630